



DEPARTMENT OF LAW
OFFICE OF THE
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STATE CAPITOL
Phoenix, Arizona 85007

BRUCE E. BABBITT
ATTORNEY GENERAL

August 16, 1977

The Honorable Larry Hawke
Arizona State Representative
House Wing, State Capitol
Phoenix, Arizona 85007

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Re: 77-158-A (R77-251)

Dear Representative Hawke:

I am withdrawing my letter opinion 77-158 dated August 15, 1977 and substituting this one in place of it. This action is being taken because the paraphrasing of the statute in that letter could have resulted in its misconstruction. As you can see, the reasoning of that opinion, and the result reached, remain unchanged. For clarity, our opinion is herewith set forth in full.

In your letter to me dated July 19, 1977, you requested an opinion concerning the constitutionality of Section 42-1321.01. That statute reads as follows:

"In addition to the provisions of § 42-1321 and until December 31, 1979, this article shall not apply to sales of less than one thousand dollars per transaction made directly to a legal resident of the Republic of Mexico who holds a valid nonresident alien border crossing card, or a valid nonimmigrant visa, and who displays such card, or visa, at the time of purchase. The provisions of this section shall apply only to those areas within thirty miles of the border between the United States and Mexico."

In my opinion this statute is constitutional.

States have broad discretion in establishing classifications for tax purposes. If the classification is not arbitrary and rests upon some reasonable consideration of policy, it meets the constitutional test. Considering the previous practice of the Department of Revenue in treating sales to Mexican Nationals as exempt and the abandonment of that practice at the time of devaluation of the Mexican currency, there is a rational basis for the statutory classification in A.R.S. § 42-1321.01.

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In Allied Stores of Ohio v. Bowers, 358 U.S. 522, 79 S.Ct. 437, 3 L.Ed.2d 480 (1959) the Court upheld a classification for tax purposes which was designed to stimulate business activity in the state for the purpose of improving the State's economy. In view of the similar purpose of this classification of retaining a category of business which the state had in the past, the statutory classification of A.R.S. § 42-1321.01 certainly meets the constitutional test of a reasonable governmental purpose.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Bruce E. Babbitt". The signature is fluid and cursive, with the first name "Bruce" and last name "Babbitt" clearly distinguishable.

BRUCE E. BABBITT
Attorney General

BEB:JDW:eb